

**James Madison to Charles J. Ingersoll, July 28,  
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**TO C. J. INGERSOLL. MAD. MSS.**

Washington July 28th 1814

Dear Sir I have received your favor of the 18th instant, and delivered into the hands of Mr. Rush the interesting extract inclosed in it. The armed neutrality in 1780 forms an Epoch in the history of maritime law, which makes it more than a point of mere curiosity, to trace it to its real source. You know perhaps that there is an American pretension to a share at least in bringing about that measure. The fact may not improperly enter into a general research.

On the question of "free ships, free goods," it has always appeared to me very clear, that the principle was right in itself, and friendly to the general interest of Nations. It is perhaps less clear, that the United States have a special interest in it; unless combined with another principle, of which an example is found in our Treaty with Prussia, and probably in no other; namely, that unarmed merchant vessels, like wagons or ploughs, the property of one belligerent, should be unmolested by the other. This principle has, I believe, an undisputed American Fa

ther in Doctor Franklin.

On the question, whether under the law of Nations, as it stands de facto, "free ships make free Cargoes," the United States at an early day, took the negative side<sup>1</sup> ; and although

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the acknowledgment of it has been shunned as much as possible since, it seems to have been generally understood, that the British doctrine was practically admitted.

1 See Jefferson's correspondence with Genet. *Madison's Note*.

Were the question to be regarded as unsettled, and open to fair discussion, I am persuaded, that the weight of authority furnished by reason, public good, treaties, and the luminaries of public law, preponderates in favor of the principle "free ships free goods."

The ablest defence of the opposite principle which I have seen, is in a treatise by Croker the present Vice Admiralty Judge, at Halifax, in answer to Schlegel. I am sorry I neither possess a Copy, nor can refer you to any convenient depository of one.

On the side of "free ships, free goods" may be urged not only the intrinsic merit of the rule, and the number and character of distinguished Jurists, but the predominant authority of Treaties, even of Treaties to which Great Britain is a party. Prior to the Treaty of Utrecht, her treaties, particularly with the Dutch, carefully inserted the stipulation. Sir W. Temple, her Ambassador, claimed great merit, on one occasion for his success in obtaining from them, an article to that effect. In the Treaty of Utrecht in 1713, to which the several great maritime powers were parties, the principle is stipulated in the most explicit form. In the successive Treaties, to which the great maritime powers were also parties in 1748, 1763 & 1783, the Treaty of Utrecht is renewed and made a part thereof. Perhaps no article in maritime law, can be found which at one time rested on such broad and solid evidence of that general consent of Nations, which constitutes the positive law among them. To those Treaties, embracing so many parties, may be added the Treaty of 1786, between the two most important of them, Great Britain & France. In the negotiations at Amiens, at a still later date, the British Government was desirous of again re-enacting the Treaty, tho' probably with a view rather to the political balance, than to the maritime principles contained in it.

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It has been unfortunate, that all the efforts of the Baltic Powers to secure the interests of neutrals have been frustrated by the want of a united and determined perseverance. Their leagues have been

broken to pieces; and to finish the catastrophe, each of the parties has separately deserted itself. The latter Treaties of Russia, of Sweden, and of Denmark, with Great Britain, have all, in some form or other, let in the British doctrines, and become authorities against the claims of neutrals.

If a purification of the Maritime Code ever take place, the task seems to be reserved for the United States. They cannot fail to acquire rapidly more and more of respect from other Nations, and of influence on those having a common interest with themselves. They will soon become, in the Canvas they spread, and in all the means of power, on the Ocean, rivals of the Nation which has in fact legislated on that element. Under such auspices, truth, justice, humanity, and universal good, will be inculcated with an advantage which must gradually and peaceably enlist the civilized world, against a Code which violates all those obligations; a code as noxious by the wars and calamities it produces to its overbearing patron, as to the Nations protesting against it.

As a preparation for such a result, it is of great moment that the subject of maritime law should appear in our public debates, in the judicial proceedings, and in individual disquisitions, to have been profoundly studied and understood; so as to attract favorable attention elsewhere; and by inspiring respect for the lights and the character of the Nation, increase that for its power and importance. The Law of Nations has been made by the powerful nations; and these having been warlike in their dispositions and institutions, the law has been moulded to suit belligerent rather than peaceable nations. With the faculties for war, it is to be hoped, our country will continue friendly to peace, and exert the influence belonging to it, in promoting a system favorable to Nations cherishing peace and justice, rather than to those devoted to ambition and conquest.

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The questions claiming more particular research and elucidation seem to be, those relating to Contraband of war, blockades, the Colonial and Coasting trades, and the great question of "free ships, free goods."

Accept &c